

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)

WRIT PETITION NO. 11858 of 2023

IN THE MATTER OF:

An application under Article 102 read with Article 44 of the Constitution of the People's Republic of Bangladesh.

And

IN THE MATTER OF:

Noor Mohammad

..... Petitioner

versus

Government of Bangladesh represented by the Secretary, Ministry of Home Affairs, Bangladesh Secretariat, Dhaka and others

.....Respondents.

And

Mr. Md. Elyas Ali Mondal, Advocate

..... for the Petitioner.

Mr. Munirujjaman, Advocate

..... For the Respondent No. 02

Heard on: 28.11.23, 04.12.23 & 05.12.2023

Judgment on 06.12.2023.

Present:

Mr. Justice Md. Jahangir Hossain

and

Mr. Justice S.M. Masud Hossain Dolon

S.M. Masud Hossain Dolon, J:

On an application under article 102 of the Constitution, the Rule Nisi was issued in the following terms:

“Let a Rule Nisi be issued calling upon the respondents to show cause as to why a direction should not be given upon the respondents to deliver the petitioner's passport bearing “Delivery Slip” No. 411-000341430 dated 13.07.2023 should not be

declared to have made without lawful authority and is of no legal effect and/or pass such other or further order or orders as to this court may seem fit and proper.”

Fact relevant for disposal of the Rule are that the petitioner applied for E-Passport to the Director General (D.G), Immigration and Passport Department (in short respondent No. 2) after completion of all formalities. The respondent No. 2 gave a delivery slip being No. 4116-000341430 dated 13.07.2023 to the petitioner and the tentative date of delivery of his passport was on 27.07.2023. The stipulated period of delivery of passport had been expired and the petitioner on several occasions went to the office of the Respondent No. 2 to collect his passport but the authority did not give any satisfactory reason to inordinate delay to delivery of the passport. The petitioner served a notice for demanding justice through his engaged learned lawyer on 04.09.2023 requesting the respondents to delivery the passport but the respondents did not pay any heed to it.

Thereafter, having found no other equally efficacious remedy the petitioner filed the instant writ petition and obtained the Rule.

Mr. Md. Elyas Ali Mondal, the learned Advocate appearing for the petitioner submits that the inordinate delay is indirect refusal to deliver the passport of petitioner which has been hampering and impeding the fundamental rights of the petitioner. The respondent No. 2 cannot abuse his power arbitrarily and prejudicially to infringe the

constitutional rights of the citizen. He further submits that as per section 6(1)(e) of the Bangladesh Passport Order, 1973, the passport authority may refuse to issue a passport if they are satisfied that the applicant is evading or likely to evade appearance in any pending proceeding against him in a criminal court or that an order prohibiting the departure from Bangladesh. Learned Advocate lastly submits that after receiving passport on 23.12.2018 the petitioner had been visited in China and United Arab Emirate in several occasions but no order was prohibiting the petitioner from departure of Bangladesh or any authority prohibiting the departure him from Bangladesh. In this regard he cited the case *Tariqul Islam vs Bangladesh and others* 7ALR 2016(1), *Syed Mokbul Hossain vs Government of Bangladesh*, represented by the Secretary, Ministry of Home Affairs, Bangladesh Secretariat, Dhaka and others, 44 DLR (1992)39, *Ruhul Kabir Rizvi (Md) vs Government of Bangladesh*, represented by the secretary Ministry of Home Affairs and another 69 DLR(2017) 335, *Monir Haidar vs Ministry of Home Affairs, Bangladesh and others*, 2018 (8) 14 ALR HCD.

Mr. Munirujjaman, the learned Advocate on behalf of the respondent No. 02 submits that the Department of Immigration and Passport after receiving the application from the petitioner sent the application for verification to the Special Branch of Bangladesh Police and after verification a report was submitted by them and revealed that a criminal case has been pending in the name of the petitioner and thus

the concerned authority refrained from issuing a passport in his name. He further submits that the respondent has apprehended that there is highly likely possibility of the petitioner to evade his appearance in the trial and as such, the authority without a positive police verification report felt unsafe to issue a passport to the petitioner and as such the Rule is liable to be discharged.

We have perused the writ petition and all other relevant papers presented by the parties in connection with the contents of this writ petition. It appears that the petitioner filed an application to the Respondent No. 2 for a E-Passport after meeting all requirements and the Respondent No. 2 gave a delivery slip being no. 4116-000341430 dated 13.07.2023 and the tentative date of delivery of his passport was on 27.07.2023. It appears that the Department of Immigration and Passport Authority have the power to refuse the passport under Article 36(e) of the Constitution following grounds:

“(e) The applicant is evading or likely to evade appearance in any proceedings against him in a criminal Court in Bangladesh or that an order prohibiting the departure from Bangladesh or the applicant has been made by any such Court in Bangladesh or that an order prohibiting the departure from Bangladesh or

the applicant has been made by any such Court.”

It was argued on behalf of the petitioner that the petitioner has been enjoying the privilege of bail, the case lodged against him under section 22(ga) of the Narcotics Control Act, it is not the petitioner who is trying to evade appearance in any proceeding in criminal court. Admittedly, under Article 36 of the Constitution, a citizen of Bangladesh has freedom of movement includes a right to go abroad and consequently no person can be deprived of his right, except according to the procedure prescribed by law.

The learned Advocate for the petitioner has also referred to the case of Ruhul Kabir Rizvi vs Bangladesh 69 DLR (2017) it was observed:

*“Constitution of Bangladesh, 1972 Article 36
Every citizen shall have the constitutional right to move freely throughout Bangladesh and to leave and re-enter Bangladesh.*

Bangladesh Passport Order Article 5(2)

The authority reserves the right to issue passport or travel document as the case may be or refuse to issue passport or travel document to any citizen of the country. But the authority must exercise this power to issue passport or to refuse to issue passport legally and judiciously.”

The learned Advocate for the petitioner has referred to the case of Tariqul Islam vs The Bangladesh and others 7 ALR 2016 (1) it was observed:

“Section 6(1)(2)

Mere pendency of a criminal case does not disqualify the petitioner to have a passport.

The High Court Division holds that a passport is a very important document to a citizen of the country. It is not only a travel document, it also gives identity of a person relating to his nationality. Historically, legal authority to issue passports is founded on the exercise of each nation’s executive discretion.”

After scrutinized of all documents it appears that Sessions Case No. 24 of 2003 arising out of G.R. case No. 764 of 2008 is pending before the Additional Sessions Judge, 1st Court, Bogura against the accused petitioner and same has been pending for so long. During the pendency of the case the petitioner was received his present passport no. BY0326603 and issued date of his passport on 23.12.2018. After receiving passport the petitioner had been visited in Chaina and United Arab Emirates in several times in the years 2019, 2021 and 2022. We also found the expire date of the passport on 22.12.2023 i.e. the validity of his present Mashin Readable Passport (MRP) has still remain valid and if petitioner has desired to evade the appearance of the criminal court he can do so at any time.

On careful examination of the annexures we found the petitioner has been on bail in a case lodged against him but no criminal court or that an order prohibiting him to departure from Bangladesh or the application has been made any such court.

In view of the above facts and circumstances, we find substances in the submission of the learned Advocate for the petitioner.

In the result, the Rule is made absolute without any order as to costs.

The Respondents are directed to deliver the passport as Delivery Slip No. 411-000341430 dated 13.07.2023 within 30(thirty) days from the date of receipt of a copy of this judgment.

Communicate the order at once.

Md. Jahangir Hossain, J:

I agree.